



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. C. Scott Richardson
Brazoria County
Criminal District Attorney's Office
Civil Division
329 North Arcola
Angleton, Texas 77515-4649

OR94-099

Dear Mr. Richardson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21947.

Brazoria County received an open records request for information concerning the county's request for proposals to provide local and intraLATA coin, coinless, and inmate telephone service. You have submitted for review the proposal made by Southwestern Bell Telephone Company with attachments one and six, and you contend that Southwestern Bell wishes to argue that section 552.110 excepts the proposal from required public disclosure.² Pursuant to section 552.305, we notified Southwestern Bell of the open records request. Southwestern Bell claims that two portions of the document you submitted for review, the proposed commission rates and the proposed payment schedules, are excepted from required public disclosure by section 552.110.³

¹The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

²We assume that you intend to release the other information requested because you did not submit it for review.

³Southwestern Bell also claims that the portion of attachment 13 that reflects the commission rates is excepted from disclosure by section 552.110. However, you did not submit this attachment for review,

Section 552.110 excepts from required public disclosure "trade secret and commercial and financial information obtained from a person and privileged or confidential by statute or judicial decision." This exception protects the property interests of third parties recognized by the courts. Open Records Decision No. 319 (1982). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determine whether information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's] business; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken by [the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

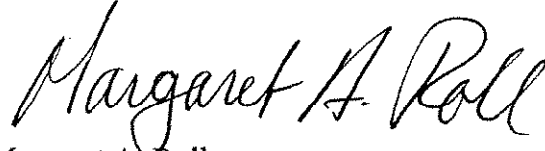
RESTATEMENT OF TORTS, § 757 cmt. b (1939); *see also* Open Records Decision No. 552 (1990). We must accept a claim that a document is excepted as a trade secret if a *prima facie* case is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. However, when a governmental body or company fails to provide any evidence of the factors necessary to establish a trade secret claim, we cannot conclude that the trade secret prong of section 552.110 applies. Open Records Decision No. 402 (1983).

We conclude that section 552.110 does not except from required public disclosure as a trade secret any information in the documents you submitted for review. Southwestern Bell has not provided enough information to establish a *prima facie* case that any of the information is a trade secret. Southwestern Bell did not provide any facts to establish the amount of effort or money it expended in developing the information; nor did it provide enough information to establish all the other criteria for a trade secret. Furthermore, we cannot see how disclosing the commission rates and payment schedules proposed to Brazoria County after the contract has been awarded will give Southwestern Bell's competitors an advantage if, as Southwestern Bell claims, the commission rates and payment schedules are unique for each customer. Therefore, you must release all of the information you submitted to us for review.

and you inform us that you have already released this attachment to the requestor because Southwestern Bell did not mark any portion of it as proprietary when it submitted the proposal to you.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open-records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 21947

Enclosures: Submitted documents

cc: Mr. Timothy P. Leahy
Attorney
Southwestern Bell Telephone Company
One Bell Center
Room 3504
St. Louis, Missouri 63101
(w/o enclosures)

Mr. Rob Eason
Southwestern Bell Telephone Company
8803 Brae Acres
Houston, Texas 77074
(w/o enclosures)

Mr. Gary L. Massey
Security Telecom Corporation
1111 West Sixth Street, No. 362
Austin, Texas 78703
(w/o enclosures)